

### REMARKS

This communication is responsive to the Office Action dated December 8, 2008 and received in this application. Reconsideration of pending claims 1, 3, 4, 6-8, 10, 11, 13, 14, 16, 17, 19-21, 23, and 25-39 is respectfully requested.

Claims 1, 3-4, 6-8, 10-11, 13-14, 16-17, 19-21, 23 and 25-33 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,266,649 to Linden et al. ("Linden") in view of U.S. Pat. No. 5,933,811 to Angles et al. ("Angles"), and further in view of U.S. Pub. No. 2004/0024652 to Buhse et al. ("Buhse"). This rejection is traversed.

Claim 1 recites: *[a] service managing apparatus for managing an information transmission service in which digital content is sent in real time between communication devices connected to each other over a network, the apparatus comprising:*

*a communication controlling means for controlling the communication with each of the communication devices;*

*an information registering means for maintaining registration information on more than one piece of digital content available from those of the communication devices that are registered as an information provider; and*

*an information managing means for dynamically generating, based on the registration information, choices-window information from which selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content,*

*the information managing means updating, when the registration information has been updated based on updating information reflecting the current status of the information provider, the choices-window information on the basis of the updated registration information, wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time, and*

*wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the*

*communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time.*

These claimed features accommodate the sending of digital content between communications devices that are connected to each other. That is, the digital content itself is selected and then received by one of the communication devices, with the digital content itself being provided to that communication device from another of the communication devices (the information provider).

Claim 1 recites a service management apparatus that manages an information transmission service in which the digital content is sent in real time between the so-connected communication devices. Pursuant to this, an information registering means registers the digital content available from those of the communication devices that are registered as an information provider. The information managing means dynamically generates choices-window information for selection of a desired piece of offered digital content for the communication device that is to receive the desired piece of offered digital content. The communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider. Additionally, the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time. When, this is the case, the communication controlling means controls the connection so that the digital content can be provided in real time between the respective communication devices.

Linden fails to even basically address in any way controlling a connection between the respective communication devices so that the digital content can be provided from one communication device to the other. As such, there are also various claimed particular features in support of such digital content provision that are wholly absent from Linden.

Linden discloses a system that allows for collaborative recommendations wherein computer users may rate various items that are available through the web site/server. The computer

users do not register “digital content” that is to be provided by their computer, nor do they select from among the offered digital content so that it can be sent from one of the computers to another of the computers that may be connected through the network.

Accordingly, Linden at least fails to disclose or in any way suggest “*wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time,*” as claimed by Applicant.

At best, one “communication device” in Linden may post a recommendation about some content (e.g., a paperback book, a chair, etc.) that is available from a separate service provider. This is obviously not the provision of digital content. Nor is it the provision of digital content, or controlling the same, as provided by one communication device to another communication device.

Presumably, according to the apparent stance in the Action, the “recommendation” itself is the digital content. However, in this instance, the recommendation is merely posted to the server, and the server later conveys the recommendation to another user browsing available content. There is never an establishment of a connection between the communication devices, let alone in response to selection of content, or further in response to selection based upon indicated availability of the digital content from the communication device that is information provider in real time. With this degree of deficiency, it is clear that Linden has little, if any, disclosure pertinent to Applicant’s claimed invention.

Still further, Linden does not disclose or suggest “*wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time,*” or “*wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the*

*information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time,” as claimed by Applicant.*

Linden discloses generating recommendations that are specific to a shopping cart. (See 6:52-67 of Linden). This is not an example of registering a device as an information provider of digital content, or providing an indication that the corresponding digital content is available in real time, or of providing the desired piece of offered digital content in real time, from the registered communication device that is the information provider to the registered communication device that is to receive the digital content.

The Action seeks to address this deficiency by again repeating the reference to the recommendation of the user, and claiming that the server filters what is ultimately shown to the other user as being available. Again, this ignores the information provider and information recipient roles of the two communication devices. In no way does the recommendation of the product constitute “*wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time,*” as claimed by Applicant. In Linden, the only analogous window-choices would be the content available from the server. This is not an example of offered digital content, and “choices” are not presented in the claimed fashion. Moreover, real time provision of the digital content is not in any way addressed, let alone real time provision of the digital content from the communication device (rather than from the server as is the case in Linden).

Angles does not remedy the deficiencies of Linden. Angles discloses a system for delivering customized advertisements within interactive communication systems. When a user of a “consumer computer” accesses an offering from a content provider computer, a corresponding advertisement provider computer generates a custom advertisement based upon the user’s profile, and combines that custom advertisement with the offering being provided by the content provider computer for display by the consumer computer.

Although some “content” is arguably delivered from the advertisement provider computer to the consumer computer (*i.e.*, the customized ads, presumably within web pages or the like that are accessed through the content provider computer), as with the Linden reference there is clearly no disclosure or suggestion of the features of having choices-window information *from which selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content.*” Even under the strained interpretation of this reference that appears to have been maintained by the Examiner in the Action, there is no reasonable instance of selection of the desired content in a choices window as claimed.

The Action references prior registration of a user with the advertisement provider as allegedly disclosing this feature. Even assuming that this is disclosed, this is merely a prior registration in which, perhaps, a user enters profile information or preferences. It has nothing to do with available digital content or the selection of the same, and the reference to this registration process only further highlights the deficiency of the combination offered by the Examiner.

It bears repeating that the claims actually recite “*wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time,*” and “*wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time,*” and that neither reference contains any disclosure whatsoever of these claimed features.

In addition to the above-noted inadequacies, the Action notes that the combination of Linden together with Angles still does not disclose maintaining registration information on more than one piece of digital content from registered communication devices, offered digital content in real time, and offered content being provided in real time when it is indicated as being offered in real time. (See Office Action, at p. 9).

Buhse remedies neither the deficiencies noted in the Action nor the additional deficiencies noted above regarding Linden and Angles. Buhse discloses a digital distribution platform that provides a common messaging system that is said to be flexible while at the same time providing digital rights management enforcement. Buhse clearly describes a system wherein a variety of devices communicate with the system to review and acquire content. There is no mention of the establishment of connections between separate communication devices of information providers and information recipients wherein the content is then provided from the information provider communication device to the communication device that is to receive the digital content. The available “digital products” are merely those available through the system, not from one communication device to the other as claimed.

Thus, since Linden, Angles, and Buhse, whether taken alone or in combination, fail to yield the claimed features recited in Applicant’s claim 1, Applicant submits that a *prima facie* case of obviousness is not present for that claim. For reasons similar to those provided regarding claim 1, independent claims 8, 14 and 21 are also neither disclosed nor suggested by the relied-upon references.

It is also noted that, although the absence of claimed features from even the combination of references is sufficient to draw a conclusion that the *prima facie* case of obviousness has not been presented, the combination itself is faulty. There is no logic or clear presentation as to how these references could possibly be combined in the fashion offered in the Action, as they each are in different technology areas and each solve wholly different problems.

The dependent claims are also distinct from the references, for their incorporation of the features recited in the independent claims, as well as for their separately recited, patentably distinct features.

For example, claim 3 recites “[t]he apparatus according to claim 1, wherein the information managing means generates the choices-window information from which selection is available only for digital content that can currently be provided in real time.” The Action alleges

that Linden discloses these claimed features, with a vague reference to a passage indicating that a filtered list can be shown to a user. The cited listing has nothing to do with whether digital content can currently be provided in real time and has no bearing on what is claimed by Applicant.

As another example, claim 4 recites “[t]he apparatus according to claim 1, wherein the updating information includes types of more than one media which can be used for the real-time provision of the offered digital content.” The Action alleges that Buhse teaches these claimed features, but this is not correct. As noted, the claimed features offer an indication of types of media that are available. The passage cited in the Action as evidence of disclosure of these features in Buhse merely notes that platform independent content is provided. This is not what is claimed by Applicant.

As still another example, claim 19 recites: “[t]he system according to claim 14, wherein:

the updating information includes information indicative of the position of the communication device which sends the offered digital content; and

the communication controlling means controls, based on the position information, the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider.”

The Action alleges that column 7, lines 20-39 of Linden offer an example of these claimed features. This passage merely indicates that a web site may have a user profile database. There is no mention of any kind regarding the indication of the position of the communication device that sends the offered digital content, or the related control of the connection based upon this position information.

These and other dependent claim features are wholly absent from the relied-upon references.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of the claims under 35 U.S.C. § 103(a) as being unpatentable over the combination of Linden, Angles, and Buhse.

Claims 34-39 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Linden, Angles, and Buhse, and further in view of U.S. Pat. No. 6,996,094 to Cave et al. ("Cave"). This rejection is traversed.

These claims variously depend from the independent claims discussed above, and therefore incorporate the features recited therein and absent from the relied-upon references for the noted reasons. Cave does not remedy these deficiencies.

Moreover, the dependent claims also separately recite features that are not disclosed or suggested by the combination of references. For example, claim 34 recites: "[t]he apparatus according to claim 1, wherein the communication devices are voice over internet protocol devices, and wherein when selection is made of a desired one of the plurality of pieces of offered digital content, the communication controlling means establishes a session between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider to accommodate providing the offered digital content in real time."

Cave does not disclose or suggest these claimed features. At best, Cave merely discloses that VOIP devices are known in a general sense, with no indication whatsoever of providing the above-recited features of claim 34. That is, there is no mention of responding to a selection of a desired piece of offered digital content available from a VOIP communication device by establishing a session between the selecting and providing VOIP communication devices to accommodate providing the digital content in real time.

The remaining dependent claims 35-39 are similarly neither disclosed nor in any way suggested by the relied-upon references. It is also noted that there has been no assessment as to how yet another disparate reference would be combined with the remaining references. The original



combination is faulty, and the attempted addition of the Cave reference only exacerbates the problems with the proposed combination.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of the claims under 35 U.S.C. § 103(a) as being unpatentable over the combination of Linden, Angles, Buhse, and Cave.

In view of the foregoing arguments, all claims are believed to be in condition for allowance. If any further issues remain, the Examiner is invited to telephone the undersigned to resolve them.

This response is believed to be a complete response to the Office Action. However, Applicant reserves the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers. Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicant expressly does not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

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Respectfully submitted,

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